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Attorney for Defendants
PERFICIO NETWORKS, INC. and VIVACITY, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

ENVIRONMENTAL RESEARCH
CENTER, INC., a California non-profit
corporation,

Plaintiff,

vs.

PERFICIO NETWORKS, INC., a
California corporation, and VIVACITY,
INC., a California corporation,

Defendants.

CASE NO. RG20067780

STIPULATED CONSENT
JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed: July 15, 2020

Trial Date: None set

1. INTRODUCTION

1.1 On July 15, 2020, Plaintiff Environmental Research Center, Inc. ("ERC"), a non-profit corporation, as a private enforcer and in the public interest, initiated this action by filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the "Complaint") pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*

1 (“Proposition 65”), against Perficio Networks, Inc. and Vivacity, Inc. (collectively,
2 “VIVACITY”). In this action, ERC alleges that certain products manufactured, distributed, or
3 sold by VIVACITY contain lead, a chemical listed under Proposition 65 as a carcinogen and
4 reproductive toxin, and expose consumers to this chemical at a level requiring a Proposition 65
5 warning. These products (referred to hereinafter individually as a “Covered Product” or
6 collectively as “Covered Products”) are: (1) YOR Supergreens; (2) YOR Shake Chocolate;
7 (3) YOR Shake Vanilla; and (4) YOR Essential Vitamin.

8 **1.2** ERC and VIVACITY are hereinafter referred to individually as a “Party” or
9 collectively as the “Parties.”

10 **1.3** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other
11 causes, helping safeguard the public from health hazards by reducing the use and misuse of
12 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
13 and encouraging corporate responsibility.

14 **1.4** ERC alleges that each defendant is a business entity each of which has employed
15 ten or more persons at all times relevant to this action, and qualifies as a “person in the course of
16 doing business” within the meaning of Proposition 65. VIVACITY manufactures, distributes,
17 and/or sells the Covered Products.

18 **1.5** The Complaint is based on allegations contained in ERC’s Notice of Violation
19 dated April 9, 2020 that was served on the California Attorney General, other public enforcers,
20 and VIVACITY (“Notice”). A true and correct copy of the 60-Day Notice dated April 9, 2020
21 is attached hereto as *Exhibit A* and incorporated herein by reference. More than 60 days have
22 passed since the Notice was served on the Attorney General, public enforcers, and VIVACITY
23 and no designated governmental entity has filed a Complaint against Vivacity with regard to
24 the Covered Products or the alleged violations.

25 **1.6** ERC’s Notice and Complaint allege that use of the Covered Products by
26 California consumers exposes them to lead without first receiving clear and reasonable
27 warnings from VIVACITY, which is in violation of California Health and Safety Code section
28 25249.6. VIVACITY denies all material allegations contained in the Notice and Complaint.

1 **1.7** The Parties have entered into this Consent Judgment in order to settle,
2 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.
3 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute
4 or be construed as an admission by any of the Parties or by any of their respective officers,
5 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,
6 franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact,
7 issue of law, or violation of law.

8 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall
9 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in
10 any current or future legal proceeding unrelated to these proceedings.

11 **1.9** The Effective Date of this Consent Judgment is the date on which ERC
12 electronically serves Notice of Entry of the Consent Judgment on VIVACITY.

13 **2. JURISDICTION AND VENUE**

14 For purposes of this Consent Judgment and any further court action that may become
15 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter
16 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction
17 over VIVACITY as to the acts alleged in the Complaint, that venue is proper in Alameda County
18 Superior Court, and that this Court has jurisdiction to enter this Consent Judgment as a full and
19 final resolution of all claims up through and including the Effective Date that were or could have
20 been asserted in this action based on the facts alleged in the Notice and Complaint.

21 **3. INJUNCTIVE RELIEF, REFORMULATION, TESTING AND WARNINGS**

22 **3.1** Beginning on the Effective Date, VIVACITY shall be permanently enjoined
23 from manufacturing for sale in the State of California, "Distributing into the State of
24 California," or directly selling in the State of California, any Covered Products that expose a
25 person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day unless it
26 meets the warning requirements under Section 3.2.

27 **3.1.1** As used in this Consent Judgment, the term "Distributing into the State
28 of California" shall mean to directly ship a Covered Product into California for sale in

1 California or to sell a Covered Product to a distributor that VIVACITY knows will sell the
2 Covered Product in California.

3 **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure
4 Level” shall be measured in micrograms, and shall be calculated using the following formula:
5 micrograms of lead per gram of product, multiplied by grams of product per serving of the
6 product (using the largest serving size appearing on the product label), multiplied by servings
7 of the product per day (using the largest number of recommended daily servings appearing on
8 the label), which equals micrograms of lead exposure per day. If the label contains no
9 recommended daily servings, then the number of recommended daily servings shall be one.

10 **3.2 Clear and Reasonable Warnings**

11 If VIVACITY is required to provide a warning pursuant to Section 3.1, one of the
12 following warnings must be utilized (“Warnings”):

13 **OPTION 1**

14 **WARNING:** Consuming this product can expose you to chemicals including [lead] which
15 is [are] known to the State of California to cause [cancer and] birth defects or other
16 reproductive harm. For more information go to www.P65Warnings.ca.gov/food.

17 For Option 1, VIVACITY shall use the phrase “cancer and” in the Warning if the “Daily
18 Lead Exposure Level” is greater than 15 micrograms of lead as determined pursuant to the testing
19 methodology set forth in Section 3.4 or if another Proposition 65 chemical is present at a level
20 requiring a cancer warning.

21 **OPTION 2**

22 VIVACITY may elect to use the following short-form Warning:

23 **⚠ WARNING:** [Cancer and] Reproductive Harm – www.P65Warnings.ca.gov

24 For Option 2, VIVACITY shall use the phrase “cancer and” in the Warning if the “Daily
25 Lead Exposure Level” is greater than 15 micrograms of lead as determined pursuant to the testing
26 methodology set forth in Section 3.4 or if another Proposition 65 chemical is present at a level
27 requiring a cancer warning.

28 For Option 2, the entire Warning must be in a type size no smaller than the largest type

1 size used for other consumer information on the product. "Consumer information" includes
2 warnings, directions for use, ingredient lists, and nutritional information. "Consumer information"
3 does not include the brand name, product name, company name, location of manufacture, or
4 product advertising. *See* Title 27, Cal. Code Regs., § 25600.1(c) (2020). In no case shall the
5 Warning appear in a type size smaller than six (6) point type. In addition for Option 2, a symbol
6 consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline
7 shall be placed to the left of the text of the Warning, in a size no smaller than the height of the
8 word "WARNING." Where the label for the product is not printed using the color yellow, the
9 symbol may be in black and white. If the Office of Environmental Health Hazard Assessment
10 ("OEHHA") promulgates regulations modifying the text for short-form warnings on foods,
11 VIVACITY may implement such text so long as the text, as modified, is applicable to the
12 Covered Products.

13 Regardless of whether Option 1 or Option 2 is used, the Warning shall be securely
14 affixed to or printed upon the label of each Covered Product and it must be set off from other
15 surrounding information and enclosed in a box that contains no other information. In addition,
16 for any Covered Product sold over the internet, the Warning shall be displayed as follows:
17 (a) on the primary display page for the Covered Product; (b) as a clearly marked hyperlink
18 using the word "WARNING" in all capital and bold letters on the Covered Product's primary
19 display page, so long as the hyperlink goes directly to a page prominently displaying the
20 Warning without content that detracts from the Warning; (c) on the checkout page when a
21 California delivery address is indicated for any purchase of any Covered Product; however, an
22 asterisk or other identifying method must be utilized to identify which products on the
23 checkout page are subject to the Warning; or (d) by otherwise prominently displaying the
24 Warning to the purchaser prior to completing the purchase. No Warning is considered
25 prominently displayed if the purchaser must search for it in the general content of the website.

26 The Warning shall be at least the same size as the largest of any other health or safety
27 warnings also appearing on VIVACITY's website or on the label and the word "WARNING"
28 shall be in all capital letters and in bold print. The Warning may contain supplemental information

1 only to the extent that it identifies the source of the exposure or provides information on how to
2 avoid or reduce exposure to the identified chemical or chemicals.

3 VIVACITY must display the above Warning with such conspicuousness, as compared
4 with other words, statements or designs on the label, or on its website, if applicable, to render the
5 Warning likely to be read and understood by an ordinary individual under customary conditions
6 of purchase or use of the product.

7 For purposes of this Consent Judgment, the term "label" means a display of written,
8 printed or graphic material that is printed on or affixed to a Covered Product or its immediate
9 container or wrapper.

10 **3.3 Conforming Covered Products**

11 A Conforming Covered Product is a Covered Product for which the "Daily Lead Exposure
12 Level" is no greater than 0.5 micrograms of lead per day as determined by the testing
13 methodology described in Section 3.4.

14 **3.4 Testing Methodology**

15 **3.4.1** Beginning within one year of the Effective Date, VIVACITY shall
16 arrange for lead testing of the Covered Products at least once a year for a minimum of three (3)
17 consecutive years by arranging for testing of one (1) randomly selected sample of each of the
18 Covered Products, in the form intended for sale to the end-user, which VIVACITY intends to
19 sell or is manufacturing for sale in California, directly selling to a consumer in California or
20 "Distributing into the State of California." If tests conducted pursuant to this Section
21 demonstrate that no Warning is required for a Covered Product during each of the three (3)
22 consecutive years, then the testing requirements of this Section will no longer be required as to
23 that Covered Product. However, if during or after the three-year testing period, VIVACITY
24 changes ingredient suppliers for any of the Covered Products and/or reformulates any of the
25 Covered Products, VIVACITY shall test that Covered Product annually for at least two (2)
26 consecutive years after such change is made.

27 **3.4.2** For purposes of measuring the "Daily Lead Exposure Level," the lead
28 detection result of the one (1) randomly selected sample of the Covered Products will be

1 controlling.

2 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
3 laboratory method that complies with the performance and quality control factors appropriate
4 for the method used, including limit of detection and limit of quantification, sensitivity,
5 accuracy and precision that meets the following criteria: Inductively Coupled Plasma-Mass
6 Spectrometry ("ICP-MS") achieving a limit of quantification of less than or equal to 0.010
7 mg/kg or any other testing method subsequently agreed to in writing by the Parties.

8 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
9 independent third party laboratory certified by the California Environmental Laboratory
10 Accreditation Program or an independent third-party laboratory that is registered with the
11 United States Food & Drug Administration.

12 **3.4.5** Nothing in this Consent Judgment shall limit VIVACITY's ability to
13 conduct, or require that others conduct, additional testing of the Covered Products, including
14 the raw materials used in their manufacture.

15 **3.4.6** Within thirty (30) days of ERC's written request, VIVACITY shall
16 deliver lab reports obtained pursuant to Section 3.4 to ERC. VIVACITY shall retain all test
17 results and documentation for a period of five years from the date of each test. ERC's right to
18 obtain any particular lab report under this subsection shall expire three (3) years after the date
19 such lab report was issued.

20 **3.4.7** The testing requirements of this Section 3.4 do not apply to any Covered
21 Product for which VIVACITY has provided a Warning in compliance with Section 3.2
22 continuously and uninterrupted after the Effective Date; however, in the event VIVACITY
23 ceases to provide a Warning on a Covered Product in compliance with Section 3.2,
24 VIVACITY shall be required to comply with the testing requirements of this section beginning
25 immediately after the date the Warning ceases to be provided or one year after the Effective
26 Date, whichever date is later.

27 **4. SETTLEMENT PAYMENT**

28 **4.1** In full satisfaction of all potential civil penalties, additional settlement

1 payments, attorney's fees, and costs, VIVACITY shall make a total payment of \$37,500.00
2 ("Total Settlement Amount") to ERC within ten (10) days of the Effective Date ("Due Date").
3 VIVACITY shall make this payment by wire transfer to ERC's account, for which ERC will
4 give VIVACITY the necessary account information. The Total Settlement Amount shall be
5 apportioned as follows:

6 **4.2** \$9,700.00 shall be considered a civil penalty pursuant to California Health and
7 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$7,275.00) of the civil penalty to the
8 Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe
9 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
10 Code section 25249.12(c). ERC will retain the remaining 25% (\$2,425.00) of the civil penalty.

11 **4.3** \$1,877.89 shall be distributed to ERC as reimbursement to ERC for reasonable
12 costs incurred in bringing this action.

13 **4.4** \$7,268.40 shall be distributed to ERC as an Additional Settlement Payment
14 ("ASP"), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d)
15 and 3204. ERC will utilize the ASP for activities that address the same public harm as
16 allegedly caused by VIVACITY in this matter. These activities are detailed
17 below and support ERC's overarching goal of reducing and/or eliminating hazardous and toxic
18 chemicals in dietary supplement products in California. ERC's activities have had, and will
19 continue to have, a direct and primary effect within the State of California because California
20 consumers will be benefitted by the reduction and/or elimination of exposure to lead in dietary
21 supplements and/or by providing clear and reasonable warnings to California consumers prior
22 to ingestion of the products.

23 Based on a review of past years' actual budgets, ERC is providing the following list of
24 activities ERC engages in to protect California consumers through Proposition 65 citizen
25 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those
26 activities: (1) ENFORCEMENT (65-80%): obtaining, shipping, analyzing, and testing dietary
27 supplement products that may contain lead and are sold to California consumers. This work
28 includes continued monitoring and enforcement of past consent judgments and settlements to

1 ensure companies are in compliance with their obligations thereunder, with a specific focus on
2 those judgments and settlements concerning lead. This work also includes investigation of new
3 companies that ERC does not obtain any recovery through settlement or judgment;
4 (2) VOLUNTARY COMPLIANCE PROGRAM (10-20%): maintaining ERC's Voluntary
5 Compliance Program by acquiring products from companies, developing and maintaining a
6 case file, testing products from these companies, providing the test results and supporting
7 documentation to the companies, and offering guidance in warning or implementing a self-
8 testing program for lead in dietary supplement products; and (3) "GOT LEAD" PROGRAM
9 (up to 5%): maintaining ERC's "Got Lead?" Program which reduces the numbers of
10 contaminated products that reach California consumers by providing access to free testing for
11 lead in dietary supplement products (Products submitted to the program are screened for
12 ingredients which are suspected to be contaminated, and then may be purchased by ERC,
13 catalogued, sent to a qualified laboratory for testing, and the results shared with the consumer
14 that submitted the product).

15 ERC shall be fully accountable in that it will maintain adequate records to document
16 and will be able to demonstrate how the ASP funds will be spent and can assure that the funds
17 are being spent only for the proper, designated purposes described in this Consent Judgment.
18 ERC shall provide the Attorney General, within thirty (30) days of any request, copies of
19 documentation demonstrating how such funds have been spent.

20 4.5 \$10,935.00 shall be distributed to Richard M. Franco as reimbursement of
21 ERC's attorney's fees, while \$7,718.71 shall be distributed to ERC for its in-house legal fees.
22 Except as explicitly provided herein, each Party shall bear its own fees and costs.

23 4.6 In the event that VIVACITY fails to remit the Total Settlement Amount owed
24 under Section 4 of this Consent Judgment on or before the Due Date, VIVACITY shall be
25 deemed to be in material breach of its obligations under this Consent Judgment. ERC shall
26 provide written notice of the delinquency to VIVACITY via electronic mail. If VIVACITY
27 fails to deliver the Total Settlement Amount within five (5) business days from the written
28 notice, the Total Settlement Amount shall accrue interest at the statutory judgment interest rate

1 provided in the California Code of Civil Procedure section 685.010. Additionally, VIVACITY
2 agrees to pay ERC's reasonable attorney's fees and costs for any efforts to collect the payment
3 due under this Consent Judgment.

4 **5. MODIFICATION OF CONSENT JUDGMENT**

5 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by
6 written stipulation of the Parties and upon entry by the Court of a modified consent judgment
7 or (ii) by motion of either Party pursuant to Section 5.3 and upon entry by the Court of a
8 modified consent judgment.

9 **5.2** If VIVACITY seeks to modify this Consent Judgment under Section 5.1, then
10 VIVACITY must provide written notice to ERC of its intent ("Notice of Intent"). If ERC
11 seeks to meet and confer regarding the proposed modification in the Notice of Intent, then ERC
12 must provide written notice to VIVACITY within thirty (30) days of receiving the Notice of
13 Intent. If ERC notifies VIVACITY in a timely manner of ERC's intent to meet and confer,
14 then the Parties shall meet and confer in good faith as required in this Section. The Parties
15 shall meet in person or via telephone within thirty (30) days of ERC's notification of its intent
16 to meet and confer. Within thirty (30) days of such meeting, if ERC disputes the proposed
17 modification, ERC shall provide to VIVACITY a written basis for its position. The Parties
18 shall continue to meet and confer for an additional thirty (30) days in an effort to resolve any
19 remaining disputes. Should it become necessary, the Parties may agree in writing to different
20 deadlines for the meet-and-confer period.

21 **5.3** In the event that VIVACITY initiates or otherwise requests a modification
22 under Section 5.1, and the meet and confer process leads to a joint motion or application for a
23 modification of the Consent Judgment, VIVACITY shall reimburse ERC its costs and
24 reasonable attorney's fees for the time spent in the meet-and-confer process and filing and
25 arguing the motion or application. If the modifications to the Consent Judgment are minor
26 changes to the injunctive provisions (Sections 3.1-3.4) to allow VIVACITY to warn using
27 methods and language that are authorized under any amendments to the Proposition 65 statute
28 and regulations applicable to the Covered Products, ERC will have no right to recover its costs

1 and reasonable attorney's fees.

2 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
3 **JUDGMENT**

4 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or
5 terminate this Consent Judgment.

6 **6.2** If ERC alleges that any Covered Product fails to qualify as a Conforming
7 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
8 inform VIVACITY in a reasonably prompt manner of its test results, including information
9 sufficient to permit VIVACITY to identify the Covered Products at issue. VIVACITY shall,
10 within thirty (30) days following such notice, provide ERC with testing information, from an
11 independent third-party laboratory meeting the requirements of Sections 3.4.3 and 3.4.4,
12 demonstrating VIVACITY's compliance with the Consent Judgment. The Parties shall first
13 attempt to resolve the matter prior to ERC taking any further legal action.

14 **7. APPLICATION OF CONSENT JUDGMENT**

15 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their
16 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
17 divisions, franchisees, licensees, customers (excluding private labelers), distributors, wholesalers,
18 retailers, predecessors, successors, and assigns. This Consent Judgment shall have no
19 application to any Covered Product that is distributed or sold exclusively outside the State of
20 California and that is not used by California consumers.

21 **8. BINDING EFFECT, CLAIMS COVERED AND RELEASED**

22 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,
23 on behalf of itself and in the public interest, and VIVACITY and its respective officers,
24 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,
25 franchisees, licensees, customers (not including private label customers of VIVACITY),
26 distributors, wholesalers, retailers, and all other upstream and downstream entities in the
27 distribution chain of any Covered Product, and the predecessors, successors, and assigns of any
28 of them (collectively, "Released Parties"). ERC, on behalf of itself and in the public interest,

1 hereby fully releases and discharges the Released Parties from any and all claims, actions,
2 causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and expenses
3 asserted, or that could have been asserted from the handling, use, or consumption of the
4 Covered Products, as to any alleged violation of Proposition 65 or its implementing regulations
5 arising from the failure to provide Proposition 65 warnings on the Covered Products regarding
6 lead up to and including the Effective Date.

7 **8.2** ERC on its own behalf only, and VIVACITY on its own behalf only, further
8 waive and release any and all claims they may have against each other for all actions or
9 statements made or undertaken in the course of seeking or opposing enforcement of
10 Proposition 65 in connection with the Notice and Complaint up through and including the
11 Effective Date, provided, however, that nothing in this Section 8 shall affect or limit any
12 Party's right to seek to enforce the terms of this Consent Judgment.

13 **8.3** It is possible that other claims not known to the Parties and that one Party may
14 have against the other will develop or be discovered. ERC on behalf of itself only, and
15 VIVACITY on behalf of itself only, acknowledge that this Consent Judgment is expressly
16 intended to cover and include all such claims up to and including the Effective Date, including
17 all rights of action therefore. ERC and VIVACITY acknowledge that the claims released in
18 Sections 8.1 and 8.2 above may include unknown claims, and nevertheless waive California
19 Civil Code section 1542 as to any such unknown claims. California Civil Code section 1542
20 reads as follows:

21 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
22 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
23 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE
24 AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
25 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED
26 PARTY.

27 ERC on behalf of itself only, and VIVACITY on behalf of itself only, acknowledge and
28 understand the significance and consequences of this specific waiver of California Civil Code
section 1542.

8.4 Compliance with the terms of this Consent Judgment shall be deemed to

1 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead
2 in the Covered Products as set forth in the Notice and Complaint.

3 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or
4 environmental exposures arising under Proposition 65, nor shall it apply to any of
5 VIVACITY's products other than the Covered Products. Nothing in this Section shall affect
6 the scope of the releases granted in Section 8.3.

7 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

8 In the event that any of the provisions of this Consent Judgment are held by a court to be
9 unenforceable, the validity of the remaining enforceable provisions shall not be adversely
10 affected.

11 **10. GOVERNING LAW**

12 The terms and conditions of this Consent Judgment shall be governed by and construed in
13 accordance with the laws of the State of California.

14 **11. PROVISION OF NOTICE**

15 All notices required to be given to either Party to this Consent Judgment by the other shall
16 be in writing and sent to the following agents listed below via first-class mail or via electronic
17 mail where required.

18 **FOR ENVIRONMENTAL RESEARCH CENTER, INC.:**

19 Chris Heptinstall, Executive Director, Environmental Research Center
20 3111 Camino Del Rio North, Suite 400
21 San Diego, CA 92108
22 Ph: (619) 500-3090
23 Email: chris.heptinstall@erc501c3.org

24 With a copy to:
25 Richard M. Franco
26 LAW OFFICE OF RICHARD M. FRANCO
27 6500 Estates Drive
28 Oakland, CA 94611
Ph: (510) 684-1022
Email: rick@rfrancolaw.com

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1 **FOR Perficio Networks, Inc. and Vivacity, Inc.:**

2 Iris Chau
3 13681 Newport Ave. Ste. 8-103
4 Tustin, CA 92780

5 With a copy to:
6 Peg Carew Toledo
7 ARNOLD & PORTER
8 Three Embarcadero Center, 10th Floor
9 San Francisco, CA. 94111
10 Ph (415) 471-3110
11 Email: Peg.Toledo@arnoldporter.com

12 **12. COURT APPROVAL**

13 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
14 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
15 Consent Judgment.

16 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
17 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
18 prior to the hearing on the motion.

19 **12.3** If this Consent Judgment is not approved by the Court, it shall be void and have
20 no force or effect.

21 **13. EXECUTION AND COUNTERPARTS**

22 This Consent Judgment may be executed in counterparts, which taken together shall be
23 deemed to constitute one document. A facsimile or .pdf signature shall be construed to be as valid
24 as the original signature.

25 **14. DRAFTING**

26 The terms of this Consent Judgment have been reviewed by the respective counsel for
27 each Party prior to its signing, and each Party has had an opportunity to fully discuss the terms
28 and conditions with legal counsel. The Parties agree that, in any subsequent interpretation and
construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,
and no provision of this Consent Judgment shall be construed against any Party, based on the fact
that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any

1 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated
2 equally in the preparation and drafting of this Consent Judgment.

3 **15. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

4 If a dispute arises with respect to either Party's compliance with the terms of this Consent
5 Judgment entered by the Court, the Parties shall meet and confer in person, by telephone, and/or
6 in writing and endeavor to resolve the dispute in an amicable manner. No action or motion may
7 be filed in the absence of such a good faith attempt to resolve the dispute beforehand.

8 **16. ENFORCEMENT**

9 ERC may, by motion or order to show cause before the Superior Court of Alameda
10 County, enforce the terms and conditions contained in this Consent Judgment. In any action
11 brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,
12 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.

13 **17. ENTIRE AGREEMENT, AUTHORIZATION**

14 **17.1** This Consent Judgment contains the sole and entire agreement and
15 understanding of the Parties with respect to the entire subject matter herein, including any and
16 all prior discussions, negotiations, commitments, and understandings related thereto. No
17 representations, oral or otherwise, express or implied, other than those contained herein have
18 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
19 herein, shall be deemed to exist or to bind any Party.

20 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
21 authorized by the Party he or she represents to stipulate to this Consent Judgment.

22 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
23 **CONSENT JUDGMENT**

24 This Consent Judgment has come before the Court upon the request of the Parties. The
25 Parties request the Court to fully review this Consent Judgment and, being fully informed
26 regarding the matters which are the subject of this action, to make the findings pursuant to
27 California Health and Safety Code section 25249.7(f)(4) and approve this Consent Judgment.

28 ///

1 IT IS SO STIPULATED:

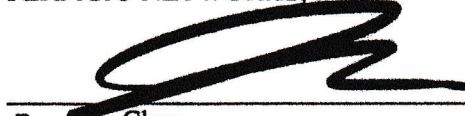
2
3 Dated: 8/10/, 2020

ENVIRONMENTAL RESEARCH
CENTER, INC.

4
5 By: 
Chris Hepinstall, Executive Director


6
7 Dated: August 7th, 2020

PERFICIO NETWORKS, INC.

8
9 By: 
Iris Chau
Its: President

10
11
12 Dated: August 7th, 2020

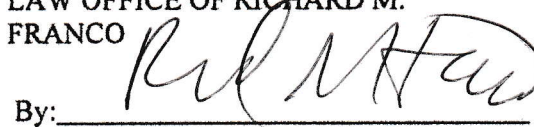
VIVACITY, INC.

13
14 By: 
Iris Chau
Its: President

15
16
17 APPROVED AS TO FORM:

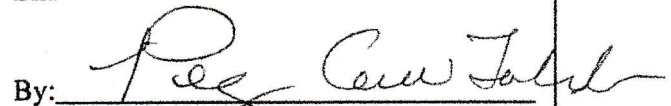
18
19 Dated: 8/11, 2020

LAW OFFICE OF RICHARD M.
FRANCO

20
21 By: 
Richard M. Franco
Attorney for Plaintiff Environmental
Research Center, Inc.

22
23
24 Dated: August 7, 2020

ARNOLD & PORTER KAYE SCHOLER
LLP

25
26 By: 
Peg Carew Toledo
Attorneys for Perficio Networks, Inc. and
Vivacity, Inc.

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ORDER AND JUDGMENT

Based upon the Parties' Stipulation, and good cause appearing, this Consent Judgment is approved and Judgment is hereby entered according to its terms.

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: _____, 2020 _____
Judge of the Superior Court